"A" Collection

App. F. IX-4

1931. 32. (Legis)

File No. 12-31

Serial Nos. 1-11

Previous References

Later References

PRESERVED

151

General and Revenue Secretariat.

Serial Nos. Eleven

A

Part B for February 33

SUBJECT.

A Regulation no. V of 1932. a Regulation to define and amend the Law relating to the sale of Goods & Regulation no. VI of 1932, a Regulation to amend the Indian Contract Act—, 1872 as in force in Mysore.

2

The Secy: to the Hon'ble the Resident—

No. Pol 965— dy 6.2.33

forwards nine Copies each of the above.

The Resident Agency
25.5.33

General and Revenue Secretariat | File No. of 193

Serial No.

A copy of the Indian Partnership Bill which was introduced into the Legislative Assembly a few days back is submitted herein for perusal. The further stages thereof will be watched and if the Bill be passed, Orders will be obtained for considering the question of its introduction to Mysore. This is the second of the series of enactments which were contemplated in British India with a view to embody the different branches of the law relating to contract in separate self-contained enactments instead of as portions of the Contract Act as found at present.

2 *The first of the series was the SALE OF GOODS ACT. It came into force in British India from 1st July 1930. It appears desirable that the question of introducing into Mysore a Regulation corresponding to the Indian Sale of Goods Act may be taken up for consideration early in view of* A *the importance of there being as much uniformity as possible in the law relating to mercantile transactions.*

3 *The existing law relating to sale of goods is in Chapter VII of the Contract Act. This was based on old English Common Law rules which were considerably modified subsequent to 1872 and codified in England into a Sale of Goods Act in 1893. This Act of 1893 was considered to have been so well drafted that it was adopted with but slight change in the other parts of the British Empire. In*

British

Note—Contn. Sheet

WD 02328—GPB—10,000—22-4-30

RC

3921/930
P

British India, the desirability of its introduc-
tion was got examined, not only in the Legisla-
tive Department, but by an independent committee
consisting of Sir D.F. Mulla, Mr. Alladi Krishna-
swami Iyer and Mr. Jayakar. They recommended the
adoption of the English Act with but little dif-
ferences.

Mysore is in this respect similarly situated,
and it is therefore submitted as a point for consi-
deration that legislation on the same lines may now
be taken up.

Secy) 7/2 20/6.

5) Submitted for kind orders if the question raised in paras 2 & 4 above may lie over for the present or go taken up

chief Secy) 21/6.

22 JUNE 1931

6) The opinion of the Govt Advocate may be obtained in the first instance, and the High Court consulted later on as to the necessity for such legislation in Mysore

Second Member) 23/6/31 23/6.

7) 24/6/31

OFFICE OF THE SECOND MEMBER OF COUNCIL
29 JUNE 1931
No. 11220.

31/6/31 30/6.

638
3921

App. F. III—2] 3

General and Revenue Secretariat — Legislative File No. 12 of 1931.

Serial No.	
	8) Subject as in draft-
	Date 2/7/31 ~~9)~~ Draft 6 2/7/31
	No P 18 A 4-7-31
	The Govt Advocate Request him to furnish opinion re the desirability of undertaking legislation on the lines of the Sale of Goods Act
Draft 4/7	
2	No 90 A 4.8.31
	From
	The Govt Advocate in the Straits Settlements that the Sale of Goods Act is an improvement on Chapter 7 of the Contract Act and that it would be desirable to introduce it in Nyasa.
	10) The Govt Advocate adds that ~~the~~ introduction would be desirable also in order to make the law in force uniform with the law in force in Northern Rhodesia
	Subject as in draft refer to paras 6 and 7 supra
	Done 5/8/31

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

4

638

Legs File No. 12 of 193 1.

General and Revenue Secretariat

This is a measure of considerable importance to the Commercial Community & should be introduced into Burma as early as possible, so that our Law in regard to mercantile transactions may be uniform with the British Indian Law. If approved steps will be taken for its introduction.

Chief Secretary)

6/8/31

Hist Member)

13/8

7 AUG. 1931

12)

The High Court may also be consulted meanwhile a draft Bill may be prepared

6/8/31

GENERAL SECRETARY. 193 No. 1145

OFFICE OF THE FIRST MEMBER 14 AUG. 1931 No. 1750

by

14-8-31

14/8

14/8/31

13)

Sent with draft to the High Court-

Done 15/8/31

14)

15/8/31

TYPING SECTION 17. AUG. 1931 GENL. & REV. SECT.

No P1055 Legis. Dept. 18.8.31

Re Negotiable Instruments

Request that to obtain & Communicate the opinion of the High Court Re the proposed legislation

3

Serial No.

15) References pertaining to the various stages in the Legislative Assembly of the Court of Judicature Act to the Sale of Goods Act III of 1930 are numbered pencil up and indicated by flags.

The Act may be accepted time with some verbal alterations which are also indicated in pencil on the copy put up

There are no extra spare copies of the Act and it seems necessary to obtain say a dozen copies of them. If agreed the Library may be required to place an order to get them

Report of Sel Committee 6.8.1929

Bill published 1.10.29

S.C. Report 25.2.30

Act 1.4.30

Sd

Date 27/8/31

16) This may be done

Date 28/8/31

17) Extract taken and file is returned to the Branch

To the Supdt Post Offices with the Compliments

29/8/31

Received

Date 8/9/31

Read 8.9.31

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

Legislative File No. 12 of 1931. | General and Revenue Secretariat

No. J. 1 50/31-32 dt. 21.9.31

Sir,

In Regd. to High Court furnishing the opinion of the High Court on the introduction of legislation on the lines of the Indian Sale of Goods Act.

2) The High Court opine that the proposed legislation may be introduced along with the amendment of the Indian Contract as it is merely a consequential one.

With the exception of the usual verbal alterations there are not many changes necessary in this particular in adopting the Indian Acts here.

Considering the usefulness of the measures, it might perhaps be opportune to place before the ensuing A. A. statements of Genl Principles for the Bills for consideration of the A. A.

Enclo with draft statements

Done
24/9/31

1380.
76 words corrected

For Disposal by Circulation.

No. C. 165 8

9 1931-32

GENERAL AND REVENUE SECRETARIAT

Council Matter.

Subject.

Sale of Goods Bill.

Circulated to the Members of Council.

By Order,

R Rangaden

3rd October 1931. *Chief Secretary to Government.*

2728/5/10

First Member of Council. 5/10/31

Second Member of Council. (Seen)

~~Third Member of Council~~

DE 7626 ICE
11. OCT. 1931

GENERAL SECRETARY.
5 OCT. 1931
No. 2687

...OF THE ...COUNCIL
...1931
No. 2884

General Secretary
DFNd with Compts after Circ
DSN Hm 5/10 5/10

Dugglibod Ramsenton)
1 Member 7. N. Signed by Member CE 6/10/31
Hm
Dec 6/10 CE 9/10/31 CE 3/10/31 True 6/10 CE 5/10/31

60

50

Final Note by the First Member of Council.

Subject:—

SALE OF GOODS BILL.

24)

The Indian Contract Act, 1872, was introduced into Mysore in 1878. Chapter VII of the Act dealing with the subject of the Sale of Goods has recently been repealed in British India and replaced by a separate Act, called the Indian Sale of Goods Act, 1930. Merchants in Mysore have large mercantile business with British India and it is very desirable therefore, to make our law on the subject of the sale of goods uniform with that in force in British India.

The Judges of the High Court have been consulted in the matter and they strongly recommend the adoption of the Indian Sale of Goods Act in Mysore. It is accordingly proposed to introduce a Bill on the lines of the Indian Sale of Goods Act into Mysore.

The proposal also involves amendment of the Indian Contract Act as in force in Mysore, for which another Bill is necessary.

Gracious sanction of His Highness is solicited for placing the statements of general principles of the two Bills before the Representative Assembly and introducing legislation thereafter in the Legislative Council.

Kurattan

MEMBER OF COUNCIL.

Bangalore,
9th October 1931.

Serial No.

DEWAN'S OFFICE 1 - OCT. 1931 2353

GENERAL SECRETARIAT 29 SEP 1931 No. 2436

Reg 0

20) This is a non controversial Bill & it is a necessary measure to bring the law in respect of Sale of foods into conformity with that in British India. A statement of general principles has been put up. The High Court has recommended its introduction into Mysore. If the Bill is placed before the R. A in october it can be introduced into the Legislative Council in dec next. We may adopt the Act passed in British India as the draft of our Bill. Further separate Bill for effecting the consequential amendment in the Cattle (Gen Secretary) Act is also put up

C 28/9/31

II Members)

Dewan) ✓

H M C 29/9

C 30/9

21) May be approved

S/R 30/9 H M

OFFICE OF THE SECOND MEMBER OF COUNCIL 30 SEP. 1931 No. 1346

22) May be circulated & sent H M C 30/9

Mule (10)

H M 2/10

Dy 3)

Chief Secretary)

C.S. C 2/10/31

Circulate

Reg 3/10/31

WD 02553—50,000—GPB—8-7 30

1931

Submitted to His Highness.

25) I submit herewith a Final Note by the First Member of Council on the subject of Sale of Goods Bill and Bill to amend the Indian Contract Act as in force in Mysore for His Highness' gracious approval.

M N Krishna Rao
OFFG. Dewan.

Mysore,
11th Oct.1931)

C105

11

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Sale of Goods Bill and Bill to amend the Indian Contract Act as in force in Mysore.

54

26)

Order.

~~KRW~~
13/10/31

Rec'd 14/10/31

RS 15/10/31

CE 15/10/31

Serial No.

27)

J. R.A. copy for noting & return

Mully

15.10.31

OFFICE OF THE SECRETARY
15 OCT 1931
REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

28)

The R.A. Office may be required to put up an order of the Proceedings in respect the Salary Cuts Bill & I.C.A. amending Bill for taking further action.

Mully

3/11/31 S.H. R.A.)

OFFICE OF THE SECRETARY
Reply Received
4 NOV 1931
REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

29)

The Statement of Genl Principles of both the Bills were passed in the R.A. Extract from the discussions is herewith put up.

Draft of Bills are placed in the file. If agreed these will be got typed and the Statement of Genl Principles adopted as the Statement of Objects & Reasons.

~~Board~~ It is also for orders whether ~~post~~ the usual procedure of taking leave is to be adopted in the case

NOTE – Contn. Sheet

13

File No. of 193 | General and Revenue Secretariat

The Bills in the Legislature has to be adopted or the stage has to be got over & the Bills brought up for being read in Council & refd to Select Committee.

Sd

6/11/31

30) Re Bills are non-controversial & were unanimously passed in the R.A. We are following the Indian Act in toto. In these circumstances it does not seem to be necessary to ask for leave to introduce into the L.C. under rule 6 of the L.C. rules. They may be directed to be published under rule 6 & introduced into the Council under S.O. 39 & 40.

Gen Secretary)

6/11/31

I Member)

7/11

7/11/31

31) 10/11/31

10/11

Dewan)

10/11/31

32) 12/11

12/11

12/11/31

DEWAN'S C... 3276 12 NOV 1931

GENERAL SECRETARY 7 NOV. 1931 No. 3180

OFFICE OF THE FIRST MEMBER OF COUNCIL 10 NOV. 1931 No. 3586

A copy of the L.C. Manual is submitted

11/11

Serial No.

Re 2 copies for further action to furnish the Govt

12.11.31 one copy of the Bill (Sale of goods and Trusts of the Contract Act) have been taken for further necessary action and the file put.

(Prot. Br.)

12.11.31

GENERAL SECRETARY
18 NOV. 1931
No. 3147/39

(4)

Both the Bills are objectionable for provincial legislation viz Sale of goods Act and Contract Act and copies have to be furnished to the Residency. Draft forwarding copies is herewith put and will be issued soon as Govt copies become available

Form
13/11/31

(Secretary)

(5) 17/11/31

(6) Forwarded 18/11

(7) 27/11/31

No POC 597 Dt 28.11.31

Re Secy to the Resident

Forwards copies of each of the Bills and states that it is proposed to introduce the Bills into Legl Council on 10.12.1931

NOTE—Contn. Sheet.

15 15

File No. of 193 General and Revenue Secretariat

37) The usual forms for obtaining the sanction of the Dewan for introducing the Bills namely, the Sale of Goods Bill & Bill further to amend the Indian Contract Act, as in force in Mysore are herewith submitted.

The bills having been published under Rule 8, the following motions are suggested in respect of each

(1) Motion that the Bill published under Rule 8 of the Rules of Business be read in Council

(2) Motion that the Bill be referred to a Select Committee

Orders are also solicited regarding the personnel of the Committee

Submitted

Mover First-Power
Secondr Genl Secy

Bill 28.11.31

38) Eight members official & non-official may be selected. The following are suggested:—

Rt S. Nariamanya	Mr. H.C. Dasappa
Mr N. Rama Rau	Mr. Bekal Srinivasa Iyengar
Mr H.V. Ramaswamy	Mr. H.B. Gundappa
Mr A.N. Narasimha Iyengar	Mr D.H. Chandrasekhara
Mr B.N. Jandhala	

1300

16/1

Serial No

DEPARTMENT OF
2 DEC 1931
3814
GENERAL SECRETARY.
1 DEC. 1931
No. 3800
OFFICE OF THE
FIRST MEMBER
2 DEC. 1931
No. 4231

Gen Secretariat) Ce
Bro Members) 3/11/31.

Hon
4/12

Ce 4/12/31

Secretariat) 3/11 Ce 4/12/31

Ce 7/12/31

Mme
2(12/3)

L. e Office for note & return

Ce 4/12/31

3/12 noted and passed to Bro Members.

3/12/31

(41) The file may be sent to L.C. Office for Secretary inviting a list of members by Select Committee as per announcement at the meeting.

Done
12/12/31

L.C Office (42) List of members of the Select Committee
with Compliments
4/12/31 to consider the Bill to define and amend the law relating to the Sale of Goods is sent herewith.

Done
14/12 Bro Members with Compts

16/12/31

(43) Noted for orders regarding

OFFICE OF THE SECRETARY
3 DEC 1931
REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

OFFICE OF THE SECRETARY
UPPER
12 DEC 1931
REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

NOTE—Contn. Sheet.

17b/7 2570 1385

Legislative File No. of 193 | General and Revenue Secretariat

The fixing of a date for the meeting of the Select Committee; the list of personnel is at flag 'E'

Colonial Office (ii) The first meeting may be held in the third week or end of January. It may be possible to finish it in one or two sittings

Bmw 16/12 recd

Chief Secretary)
2nd Member)

C 17/12/31

Recd 18/12/31

18 DEC. 1931

OFFICE OF THE SECOND MEMBER OF COUNCIL
21 DEC. 1931
No. 4905

4bj 18th Jan 1 PM, please

Lu 21.12.31

Recd 21/12

4bj Notice may be issued

Secretary to Revenue Board

No C 770 of 7-12-31

State that there is no formal form of application for this introduction of the Bills or that a formal communication is awaited for requisite to Govt of India.

(ii) Secretary. There is a draft note re the S.C. meeting

Sec 24/12 recd

48) Jmw

Issued No P.S.S.C. 4-32 24/12/31

TYPING SECTION
26 DEC. 1931
GEN'L & REV. SECTT.

General and Revenue Secretariat | File No. | of 193

Serial No. 49)

Sale of Goods Bill & Bill to amend the I.C.A.

The S.C. meeting was duly fixed for 12.1.32.

There was some discussion in the Legislative Council. The L.C. Proceedings will be requested to furnish an extract of the Proceedings pertaining thereto.

Filed 50) Copy Ra. to L.C. with compliments
Done 12/1/32 — for Kindly furnishing an Extract as desired of the minutes of the meeting

OFFICE OF THE SECRETARY
Registered
11 JAN. 1932
REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

Reg 11/1/32 57) Extracts from the L.C. Proceedings of Dec'ber re the discussion on the Sale of Goods Bill & the Bill to amend the Indian Contract Act are placed in the file & the same is returned herewith

Ra. 11-1-1932 52) Protection Branch with compts

CHIEF SECRETARIAT
2127
12 JAN. 1932
OFFICE BRANCH.

53) Extract of the Proceedings in connection with the Sale of Goods Bill in which some suggestions have been made are received

As draft office Memorandum will be required to arrange for lunch. It is felt that the S.C. meets at 11 a.m.

Done MSK 11/1/32 54) Yes 11/1/32.

Office Memorandum (for kindly noting and return of file) with compliments

MSK 12/1/32

HS 12/1

NOTE—Contn. Sheet.

WD 70—GBPM—60,000—13-8-31

19

42'27 ✓

File No. of 193 .

General and Revenue Secretariat

55) Action taken separately re: Lunch. The file may be returned to the Protection Br

dg 13.1.32 Protection Br

WWW 13.11.32

Meeting 1 P.M. on 18.1.32

Sale of Goods Bill & Coin to amend I.C.A.

56) The S.C met on 18.1.32 and the Bills Re the Sale of Goods & Coin to amend the Indian Contract Act 1872, as in force in Mysore, were discussed and the Reports are herewith, and up

57) draft Notifns publishing the Reports under S.O. 49 are herewith for sig & Secy.

Dom MR 19.1.32 (Chief Secretary)

C 29/11/32

dem 20/1/32

58) Dom C 20/1/32

21 JAN 1932 GEN. & REV. SECTT.

Serial No.

Notifn No 4131 dt 23.1.32

7 The Compiler,

Publishes the S.C. Report on the Bill to amend the Indian Contract Act, 1872 as in force in Singapore

8 Notifn No P 4133 dt 23.1.32

The Compiler,

Publishes the S.C. Report on the Bill to define and amend the Law relating to the Sale of Goods.

5?) The Bills require the sanction of the Govt of India before final passing. In the usual course reference will have to be made after the S.C. Report is presented to the Legislative Council and adopted by it. The file will be kept in Eng and motions prepared in time for the next Legis Council meeting

Draft dtd 30.1.32

Ce 30/1/32

Draft dtd 30/3/32

(6) The following matters are suggested in respect of each of the two Bills for being included in the Agenda for the next meeting of

NOTE—Contn. Sheet.

5254-31

24 | 21 The Sale of Goods Bill and the Customs Contract Act (Amendment) Bill

Legn File No. 12 of 1931. | General and Revenue Secretariat

of the Legn Council
(1) Motion that the Report of the Select Committee on the Bill and the Bill as recommended by them be taken into consideration
(2) Motion that the Bill be passed into law at a subsequent meeting of the Council
Hon'ble Second Member
Seconder Chief Secy to Govt

*In the case of the Sale of Goods Bill, the word "amended" in 1st explan. recommended, will not be used in the Indian Contract Bill.

OFFICE OF THE SECOND MEMBER OF COUNCIL
12 MAY 1932
No. 2543

Hon'ble Chief Secretary) 11/5
Second Member) 11/5/32

CHIEF SECRETARY
11 MAY 1932

(1) 12/5 Nil 13/5/32

13/5/32

13/5/32

(2) Legn Council Office for note & return with compliments
13/5 14/5/32

OFFICE OF THE SECRETARY
14 MAY 1932
REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

(3) Noted and pstd & The Prot. Bill with compts
14.5.32 14/5

Hon'ble P.S.R.

14/5/32

Second Member) 14/5/32

The Sale of Goods Bill 1855 W 29
The Bill further to amend the I.C.A, 1872

[App. F. III—2

General and Revenue Secretariat | File No. | of 193 .

Serial No.

(64) The Reports of the Sec on the Bills were read in Council and it was decided to pass the Bills at a subsequent meeting.

Sent with draft para to the Residency for sanction of Govt of India

Init [illegible] (65) Init

5.7.32 4/7/32

LEGISLATIVE SECTION
6. JUL. 1932
GENL. & REV. SECTT.

No Pol 30 of 4.7.32

9 The Secy to the Resident

Forwards copies of S.C. Report on the Bills & stating that the L.C accepted the Bills regards that the consent of the Govt of India may be obtained to the passing of the Bills into Law

No 6455/F/58-1931 dt 23.9.32

Encl A 12/7/32

From

10 The Secy to the Resident

Informs that the Govt of India have accorded their consent to the Bills.

(66) Sent for perusal.

Init 28/9/32 4-28/9

L.C Encls

NOTE—Contn. Sheet.

23
25 Sale of Cereal Bill 1933
Bill to amend the Customs Tariff Act

File No. of 193 . | General and Revenue Secretariat

67) The date on which the enactments will come into force has to be fixed.

Subject to this change the following motions may be included in the bonds in respect of each of the Bills.

"Motion that the Bill be passed"

Move the First Member of Council
Seconded by Chief Secretary

Done 7/11/32 68) It may be brought into force from 1st March 1933.

Chief Secretary)
1st Member)

RB 10/11/32
14/11/32

11 NOV. 1932

69) The 15/11/32
RB
15/11/32

OFFICE OF THE FIRST M... COLO...
15 NOV. 1932
No. 4066

70) The Motions will be communicated to the L.C. Office. The date of Commencement may be included in the introductory observations if desired

Done 17/11/32

71) Is proposition necessary?

72) A motion formally seems unnecessary

Done 24/11/32

L.C. Office for note & return

Sale of Cereals Bill 1855 32-42

Rule to amend the Indian Contract Act

General and Revenue Secretariat | File No. | of 193 . . | [App. F. III—2

Serial No.	
	73) noted and putd to the Prot.ns Br.
	AR 24/11/32 Mark
	74) On request of each of these Bills the Motion that the Bill be passed was adopted at the meeting of the Legislative Council held on the 21st inst.
5185 23/XII/32	Sanction of the Governor is to be obtained for Promulgating the Bills into Laws.
	Draft Final note in files.
	Pow 22/12 (For Member) 22/12
	F.N. Signed by Member
	Ab 23/XII 75) DS N mbd.
	(Dewan) 23/12
	Mbd 27/12/32

DEWAN'S O. 3838 27 DEC 1932

NOTE—Contn. Sheet.

25

Final Note by the First Member of Council.

Subject:—

A bill to define and amend the law relating to the sale of goods and a Bill to amend the Indian Contract Act, 1872.

Page 1011 of Official Notes

Gracious sanction of His Highness was accorded in October 1931 to place before the Representative Assembly the statements of general principles of a Bill to define and amend the law relating to Sale of Goods and another to amend the Indian Contract Act as in force in Mysore and also to introduce legislation thereafter in the Legislative Council. The statements were approved by the Representative Assembly in October 1931 and the Bills were introduced in the Legislative Council after previous publication in the meeting held in December 1931 and referred to a Select Committee. The Select Committee's reports together with the Bills as revised by them were considered at the meeting of the Legislative Council held in June 1932 when the ~~Legislative~~ Council decided to pass the Bills at a subsequent meeting ~~of the Council~~. Accordingly the Bills came up for final consideration on the 14th instant and were duly passed.

BKQ

The consent of the Government of India having been obtained to the Bills, gracious sanction of His Highness is solicited for the promulgation of the said Bills as law.

R

M, P

Bangalore,
23rd December 1932.

MEMBER OF COUNCIL.

Submitted to His Highness.

I submit herewith a Final Note by the First *Member of Council on the subject of* a Bill to define and amend the law relating to the sale of goods and a Bill to amend the Indian Contract Act, 1872, *for His Highness' gracious approval.*

M. N. Krishna Rau

Bangalore,
27th Decr. 1932.

Offg. *Dewan.*

27

Record of Cases submitted for the Orders of His Highness the Maharajà.

Subject.

Promulgation as law of the Bill to define and amend the law relating to the sale of goods and the Bill to amend the Indian Contract Act, 1872.

330

Order.

~~KRW~~

31/12/32

mrle 1.1.33

RG 31/1/33 -

1855

28

326
THT

General and Revenue
Secretariat.

Promulgation as Law of the Bill to define and amend the law relating to the Sale of goods and the Bill to amend the Indian Contract act 1872

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness'* orders before/after issue of orders. (*Vide Rules* 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

P. Rajagopalan -

Chief Secretary to Government.

Through the Secretary to Government,

....Department.

5200
2/1

FIRST MEMBER OF COUNCIL.

3.1.33

2800
2/1

SECOND MEMBER OF COUNCIL.

5/1

Gen. Secy with Compts.

RR
5/1/33.

Ltr 5/1 Ce 5/1

NOTE.—Contn. sheet

[App. F. III—2

General and Revenue Secretariat — File No. 17 — of 193 .1

Re Sale of Goods Reg^n & Reg^n to further (29)
3624/32 amend the Indian Contracts Act

Serial No.

Sent with draft Govt publishing the Sale of Goods Reg^n as Reg^n V of 1932 and the Reg^n to amend the Indian Contract Act as Reg^n VI of 1932

[illegible] JAN 1933 REV. SECTT.

Date 6/1/33

J
6/1

11 G.O. No P 3883 of 10.1.33
The Compiler
directs the publication of the Reg^n to amend the Law re the Sale of Goods as Reg^n V of 1932

12 G.O. No P 3834 of 10.1.33
The Compiler
directs the publication of the Reg^n to amend the Indian Contract Act as Reg^n VI of 1932

Drafts

Sent with finally printed proofs duly corrected with printed order letters

Date 17/1/33

J
17/1/33

Issued No P 3934-5 of 17.1.33
Printed copies of Regns have been sent to Resy as usual with No Pol 745 816.2.33
Misfire will now be recorded

Date 24/2/33

G 25/2

NOTE—Contn. Sheet.

A

WD 70—GBPM—60,000—13-8-31

Appendix F G–1].

SUBJECT.....

.....

.....

Section Legs

File No. 12-34

Serial No. 1

Diary No. of letter replied to.....

No. 718

To The Court Assistant

in Cyprus.

General and Revenue Secretariat

( )

the *193*

Sir,

Date of issue 4.7.31

I am directed to request you to be so good as to furnish Court with your opinion re the desirability of undertaking legislation in Cyprus on the lines of the Indian Sale of Goods Act, 1930

Signed by M. Cost

List of enclosures.....

Copied by.....

I remain

Sir

Your obedient Servant

Examined by.....

for Chief Secy to Govt

Date 2/7

2/7/31

The Government Advocate in Mysore

Bangalore.

I am directed to request you to be so good as to furnish Government with your opinion regarding the desirability of undertaking legislation in Mysore on the lines of the Indian Sale of Goods Act, 1930.

I have the honour to be

Sir

Your most obedient servant

For Chief Secretary to Government.

Aga/2.

638 P 31

In reply please refer to
No. 90

Tel. Address :—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore.....4th August 1931 19 - .

Legis 12-31-2

From

A. R. Nagesvara Iyer, Esq., B.A., B.L.,
Government Advocate in Mysore,
Bangalore.

Dept. Sec. 4 AUG. 1931

To

The Chief Secretary to the Government
of H. H. the Maharaja of Mysore,
Bangalore.

Sir,

With reference to your letter No. P. 118/Legis. dated the 4th July 1931, I have the honor to state that the Sale of Goods Act is an improvement on Chapter 7 of the Contract Act which was enacted over half a century ago. The defects which were noticed in the Contract - Act have been now remedied and the doubts therein have been cleared. Several matters have been defined more accurately in the new Act and alterations made to meet - the requirements of modern mercantile transactions. It would, therefore, be very desirable to introduce it in - Mysore.

2. There is another aspect of the question also to be taken into consideration. This branch of the law - appertains mainly, to mercantile transactions, and must therefore, suit the modern conditions of trade and commerce. Our merchants have a large mercantile business with British India and it is very desirable, therefore, to make our law on the subject uniform with the law in force in British India, not to speak of the other parts of the British Empire.

3. The Sale of Goods Act is based on the English - Sale of Goods Act which is said to have worked very - satisfactorily ever since it was enacted i.e., since 1893

and

4

and which is, in the words of Lord Parker ' a very successful and correct codification of this branch of the Mercantile law'. The British Indian Act - was received with a chorus of approval by the leading mercantile associations in British India.

4. The Act may, therefore, with advantage, be introduced in Mysore.

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

5

Appendix F G—1

SUBJECT.....

.....

.....

Section Legis

File No. 12-31

Serial No. 3

No. P1055

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193*

To

The Registrar, High Court

Date of issue 18/8/31

Signed by.....

Sir,

I am directed to request you to be so good as to obtain and furnish to Govt the opinion of the High Court regarding the desirability of enacting legislation on lines on the lines of the Indian Sale of Goods Act, 1930

I have etc

for Govt Secy to Govt

List of enclosures.....

Copied by.....

Examined by.....

WD 02559—GPB—25,000—25-6-30

1578

1578/3

17th August 1931.

The

The Registrar,
High Court of Mysore,
Bangalore.

I am directed to request you to be so good as to obtain and furnish to Government the opinion of the High Court regarding the desirability of undertaking legislation in Mysore on the lines of the Indian Sale of Goods Act, 1930.

I have the honor to be,
Sir,
Your most obedient servant,

for General Secretary to Government.

S.R.-2

1386 / 1931

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Telgm: JUSTICE"

Bangalore, 19th September *1931*

R. O. C. No. 50. (Secret one)
Dis. 21-9-31

Legis 12-31-4

FROM

H. M. Krishnaswami, Esq., B.A., B.L.,
Registrar, High Court of Mysore.

GENERAL SECRETARIAT
22 SEP 1931
No. Legis

TO

H. V. RAMASWAMI, Esq., M.A., B.L.,
General Secretary to the Government
of Mysore, BANGALORE.

SIR,

I am directed to acknowledge the receipt of your letter No. P.1055/Legis 12-31-3 dated the 17th August 1931 requesting to furnish to Government the opinion of the High Court regarding the desirability of undertaking legislation in Mysore on the lines of the Indian Sale of Goods Act, 1930 and in reply to forward herewith the opinion of the Judges of the High Court in the matter.

I have the honor to be
Sir,
Your most obedient servant,

Krishnaswami
for Registrar.

Submitted.
The main file has been called for with reference
Bgre
23/9/31
ACR.

Opinion of the Judges of the High Court regarding the desirability of undertaking Legislation in Mysore on the lines of the Indian Sale of Goods Act 1930.

The Act in British India has met with uniform - approval. The scheme, wording and arrangement of the Act follow closely the English Act. The Sale of Goods Act 1893 - (56 & 57 Vict: C.71). The English Act is regarded as a very successful piece of legislation. Chapter VII of the Indian Contract Act which in Mysore now embodies the Law relating to Sale of Goods, and which in British India the Sale of Goods Act III of 1930 repeals, has not been considered either exhaustive, or as embodying all the recognised rules of English Mercantile Law and usage on the subject. As observed by the Special Committee appointed to examine the provisions of the Indian Sale of Goods Bill:

" Whatever merit the simple and elementary rules embodied in the Indian Contract Act may have had, and however sufficient and suitable they may have been for the needs which they were intended to meet in 1872, the passage of time has revealed defects the removal of which has become necessary in order to keep the Law abreast of the developments of Modern business relations. The Law relating to Sale of Goods appertains mainly to Mercantile transactions. There can be no - doubt that during the last half a Century conditions in this Country relating to trade and business have undergone material changes. Methods of business have largely altered, and new relations have arisen between man and man. In dealing with these relations, it has been necessary to give recognition to new principles, and the Indian Courts have found that a Law - enacted more than 50 years ago is entirely inadequate to enable them to deal with these new relations, or give effect to the

new ...

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new principles. The result has been that on various occasions the Courts have had to hold that Chapter VII of the Indian Contract Act is not exhaustive, and to import therein analogies from the decisions of the English Courts."

The High Court is of opinion for the above reasons, which equally hold good in Mysore, that the new Act III of 1930 may, with advantage, be adopted here also.

In Section 3 of the Act III of 1930 it is provided that the unrepealed provisions of the Indian Contract Act, save in so far as they are inconsistent with the express provisions of the Indian Sale of Goods Act of 1930, shall continue to apply to Contracts for the Sale of Goods. In order to avoid inconsistency between the unrepealed portion of the Contract Act and the new Act, Section 178 of the old Act has been amended and a new Section 178 A added by Act 4 of 1930 in British India. That Amendment may also be undertaken as part of the proposed legislation.

K Srinivasaiyan

for Registrar.

886

ACR.

Sale of Goods Bill.

Statement of General Principles.

The Indian Contract Act IX of 1872 was introduced into Mysore during the Commission days by means of the Government of India Notification of 27th May 1878. Chapter VII of the Act dealing with the subject of the sale of goods has recently been revealed in British India and replaced by a separate Act, called the Indian sale of Goods Act,(Act III of 1930) The scheme wording and arrangement of the said Act follows closely the English Sale of Goods Act of 1893 (56 and 57 Victoria Ch.71) which is regarded as a very successful and correct codification of this branch of the mercantile law and has met with uniform approval and has been copied in most of the Dominions and Colonies in the British Empire and in the United States of America.

The Indian Act of 1930 was drafted by a special Committee of leading lawyers of India presided over by Sir B.C.Mitter as its chairman. The Committee observe as follows re. the necessity for amending the existing law on the subject:—

"3. WHatever merit the simple and elementary rules embodied in the Indian Contract Act may have had, and however sufficient and suitable they may have been for the needs which they were intended to meet in 1872, the passage of time has revealed

defects the removal of which has become necessary in order to keep the law abreast of the developments of modern business relations. The law relating to the sale of goods appertains mainly to mercantile transactions. There can be no doubt that during the last half century conditions in this country relating to trade and business have undergone material changes. Methods of business have largely altered and new relations have arisen between man and man. In dealing with these relations, it has been necessary to give recognition to new principles, and the Indian Courts have f found that a law enacted more than fifty years ago is entirely inadequate to enable them to deal with these new relations or give effect to the new principles. The result has been that on various occasions the Courts have had to hold that Chapter VII of the Indian Contract Act is not exhaustive, and to import therein analogies from the decisions of the English Courts.

The English law relating to the sale of goods which was admittedly the basis of Chapter VII of the Indian Contract Act has itself since 1872 undergone drastic changes, and was finally codified in 1893 by the present Sale of Goods Act (56 & 57 Vict. C.71) which discards many of the old common law rules upon which Chapter VII of the Indian Act was based, in favour of

of goods uniform with that in force in British India.

our

The Judges of High Court have been consulted in the matter and they strongly recommend the adoption of the Indian Sales of Goods Act to Mysore.

The main points of importance that the Bill seeks to embody in the existing law are thus stated by the Special -- Committee:—

~~The above statement and the reasons contained therein equally apply to Mysore.~~

"(a) The present Bill embodies the principle that the question whether a contract for the sale of goods does or does not pass the property in the goods from the buyer to the seller must in all cases be determined by the intention of the parties to the contract. The provisions of Chapter VII of the Indian Contract Act are vague and conflicting on this point. The Bill codifies the rules by which that intention may be ascertained, but the operation of these rules will be displaced by any terms of the contract defining the intention or by any attendant circumstances, including the conduct of the parties, rendering it ascertainable In following this principle, we have borne in mind that in mercantile matters the certainty of the rule is often of more

importance than the substance. If the parties know beforehand what their legal position is, they can provide for their particular wants by express stipulations. Sale, after all is a consensual contract, and the bill does not prevent the parties from maki any bargain they please. Its object is to lay down clear rules for the cas where the parties have either framed no intention or failed to express it.

(b) The distinction between a sale and an agreement to sell, which was not clear in chapter VII of the Indian Contract Act, has been clearly brought out. This distinctio is very necessary to determine the ~~ri~~ rights and liabilities of the parties to the contract.

(c) It is made clear that a contract of sale can be made by mere offer and acceptance. Neither paymen nor delivery is necessary for the purpose.

~~(d) It is made clear that a contract of sale can be made by mere offe and acceptance. Neither payment nor delivery is necessary for the purpose~~

(d) In the Indian Contract Act the "warranty" has been used in a very vague sense. In some provisions it denotes a condition which would -- enable a party aggrieved by its breac

15

~~enable a party aggrieved by its breach~~ to repudiate the contract, while in others it enables him to claim damages only. In the Bill this ambiguity has been removed.

(e) There is much conflict of decisions regarding the meaning of sec. 108 of the Indian Contract Act which relates to sales by ostensible owners. This is to a certain extent due to the obscure phraseology of the section itself. The Bill removes ~~and~~ this obscurity in clauses 27 to 30 of the Bill and ~~to~~ simplifies the law on the subject.

(f) The rules relating to delivery to carriers, stoppage in transit and auction sales are elaborate

Cl
29/9/31

16

Statement of General Principles.

A Bill to amend the Indian Contract Act 1872 as in force in Mysore.

Section 108 of the Contract Act dealing with the subject of sales of goods by persons who are in possession of the goods ~~not~~ as ~~a~~ owners ~~thereof~~, has been materially altered by clauses 27 to 29 of the proposed Sales of Goods Bill. Sec. 178 of the Act which is a cognate section and is based on the same principle as section 108, has consequently been amended in British India by Act IV of 1930, and the present Bill proposes to do the same thing in Mysore, so as to bring the law in conformity with that in British India.

29/9/37

17

Appendix F G—1]

SUBJECT .....

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.....

Section

File No.

Serial No. 5

Diary No. of letter replied to .....

No. Pol. 597 & /4

To The Secy to the Govt of the Resident

Sir,

I am directed to forward herewith two copies of each of the marginally noted Bills together with the Statement of Objects and Reasons and to state that it is proposed to introduce the Bills into the Legislative Council at the meeting to be held on 10th Dec 1931

I have the honour to be Sir Your most obedient servant

Secy to Govt

General and Revenue Secretariat

( )

the 193

Date of issue 28/11/31

Signed by Secy to Govt

(1) Sale of Goods Bill

(2) Bill further to amend the Indian Contract Act, 1872, as in force in Bijapur

List of enclosures .....

Copied by .....

Examined by .....

Date 13/12/31

17/11/31

WD 71—GBPM—40,000—20-7-31.

18

NOTIFICATION.

No. Rl. 2079—*Encls.*—*L. C., dated the* 12*th November* 1931.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to define and amend the law relating to the sale of goods is published for general information with the statement of objects and reasons.

By Order,
C. SUBRAHMANYA AIYAR,
Ex-Officio *Secretary*,
Mysore Legislative Council.

A Bill to define and amend the law relating to the sale of goods.

Whereas it is expedient to define and amend the law relating to the sale of goods; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Regulation may be called the Sale of Goods Regulation, 193 .

(2) It extends to the whole of Mysore.

(3) It shall come into force on the first day of 193 .

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(1) "buyer" means a person who buys or agrees to buy goods;

(2) "delivery" means voluntary transfer of possession from one person to another,

(3) goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them;

(4) "document of title to goods" includes a bill of lading, dock-warrant, warehouse-keeper's certificate, wharfingers' certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or

control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

(5) "fault" means wrongful act or default;

(6) "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(7) "goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(8) a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;

(9) "mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods;

(10) "price" means the money consideration for a sale of goods;

(11) "property" means the general property in goods, and not merely a special property;

(12) "quality of goods" includes their state or condition;

(13) "seller" means a person who sells or agrees to sell goods;

(14) "specific goods" means goods identified and agreed upon at the time a contract of sale is made; and

(15) expressions used but not defined in this Regulation and defined in the Indian Contract Act, 1872, as in force in Mysore have the meanings assigned to them in that Act

Application of provisions of Act IX of 1872.

3. The unrepealed provisions of the Indian Contract Act, 1872, as in force in Mysore, save in so far as they are inconsistent with the express provisions of this Regulation, shall continue to apply to contracts for the sale of goods.

CHAPTER II.

FORMATION OF THE CONTRACT.

Contract of Sale.

Sale and agreement to sell.

4. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the

property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Formalities of the Contract.

Contract of sale how made.

5 (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject-matter of Contract.

Existing or future goods.

6. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods perishing before making of contract.

7. Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before sale but after agreement to sell.

8. Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement

before the risk passes to the buyer, the agreement is thereby avoided.

The Price.

Ascertainment of price.

9. (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation.

10. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided:

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Conditions and Warranties.

Stipulations as to time.

11. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Condition and warranty.

12. (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

When condition to be treated as warranty.

13. (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied undertaking as to title, etc.

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is—

(*a*) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(*b*) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(*c*) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

Sale by description.

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied condition as to quality or fitness.

16. Subject to the provisions of this Regulation and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or

not), there is an implied condition that the goods shall be reasonably fit for such purpose:

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Regulation unless inconsistent therewith.

Sale by sample.

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample, there is an implied condition—

(*a*) that the bulk shall correspond with the sample in quality;

(*b*) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(*c*) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

CHAPTER III.

Effects of the Contract.

Transfer of property as between seller and buyer.

Goods must be ascertained.

18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract,

the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Specific goods in a deliverable state.

20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Specific goods to be put into a deliverable state.

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.

22. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or think with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Sale of unascertained goods and appropriation.

23. (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Delivery to carrier.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Goods sent on approval or "on sale or return."

24. When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—

(*a*) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(*b*) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

eservation of right of disposal.

25. (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Risk *prima facie* passes with property

26. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not:

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault:

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of Title.

Sale by person not the owner.

27. Subject to the provisions of this Regulation and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of mercantile

agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by one of joint owners.

28. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by person in possession under voidable contract.

29. When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872 as in force in Mysore, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Seller or buyer in possession after sale.

30. (1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV.

Performance of the Contract.

Duties of seller and buyer.

31. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give

possession of the goods to the buyer in exchange for the price, and buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Delivery.

33. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Effect of part delivery.

34. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Buyer to apply for delivery.

35. Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Rules as to delivery.

36. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

Delivery of wrong quantity.

37. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer

may reject them, but if the buyer accepts the goods so delivered, he shall pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Instalment deliveries.

38. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to carrier or wharfinger.

39. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant place.

40. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

41. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

42. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

43. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

44. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

48. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien.

49. (1) The unpaid seller of goods loses his lien thereon—

(*a*) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(*b*) when the buyer or his agent lawfully obtains possession of the goods;

(*c*) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Stoppage in transit.

Right of stoppage in transit.

50. Subject to the provisions of this Regulation, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Duration of transit.

51. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the

CHAPTER V.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

"Unpaid seller" defined.

45. (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Regulation.—

(*a*) when the whole of the price has not been paid or tendered;

(*b*) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights.

46. (1) Subject to the provisions of this Regulation and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(*a*) a lien on the goods for the price while he is in possession of them;

(*b*) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

(*c*) a right of re-sale as limited by this Regulation.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

Unpaid seller's lien.

Seller's lien.

47. (1) Subject to the provisions of this Regulation, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

(*a*) where the goods have been sold without any stipulation as to credit;

(*b*) where the goods have been sold on credit, but the term of credit has expired;

(*c*) where the buyer becomes insolvent.

transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage in transit is effected.

52. (1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such redelivery shall be borne by seller.

Transfer by buyer and seller.

Effect of sub-sale or pledge by buyer.

53. (1) Subject to the provisions of this Regulation, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of

lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

Sale not generally rescinded by lien or stoppage in transit.

54. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, resell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

CHAPTER VI.

SUITS FOR BREACH OF THE CONTRACT.

Suit for price.

55. (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

Damages for non-acceptance.

56. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Damages for non-delivery.

57. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Specific performance.

58. Subject to the provisions of Chapter II of the Specific Relief Act, 1877, as in force in Mysore in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

Remedy for breach of warranty.

59. (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

(*a*) set up against the seller the breach of warranty in diminution or extinction of the price; or

(*b*) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

Repudiation of contract before due date.

60. Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

Interest by way of damages and special damages.

61. (1) Nothing in this Regulation shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special

damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price—

(*a*) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable;

(*b*) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller— from the date on which the payment was made.

CHAPTER VII.

MISCELLANEOUS.

Exclusion of implied terms and conditions.

62. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

Reasonable time a question of fact.

63. Where in this Regulation any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Auction sale.

64. In the case of a sale by auction—

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(5) the sale may be notified to be subject to a reserved or upset price;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

65. Chapter VII of the Indian Contract Act, 1872, as in force in Mysore is hereby repealed. Repeal.

66. (1) Nothing in this Regulation or in any repeal effected thereby shall affect or be deemed to affect— Savings.

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Regulation, or

(*b*) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability, or

(*c*) anything done or suffered before the commencement of this Regulation, or

(*d*) any enactment relating to the sale of goods which is not expressly repealed by this Regulation, or

(*e*) any rule of law not inconsistent with this Regulation.

(2) The rules of insolvency relating to contracts for the sale of goods shall continue to apply thereto, notwithstanding anything contained in this Regulation.

(3) The provisions of this Regulation relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

STATEMENT OF OBJECTS AND REASONS.

The Indian Contract Act IX of 1872 was introduced into Mysore during the Commission days by means of the Government of India Notification of 27th May 1878. Chapter VII of the Act dealing with the subject of the sale of goods has recently been repealed in British India and replaced by a separate Act, called the Indian Sale of Goods Act (Act III of 1930). The scheme, wording and arrangement of the said Act follows closely the English Sale of Goods Act of 1893 (56 and 57 Victoria, Chapter 71) which is regarded as a very successful and correct codification of this branch of the mercantile law and has met with uniform approval and has been copied in most of the Dominions and Colonies in the British Empire and in the United States of America.

The Indian Act of 1930 was drafted by a special Committee of leading lawyers of India presided over by Sir B. C. Mitter as its Chairman. The Committee observe

as follows regarding the necessity for amending the existing law on the subject:—

"Whatever merit the simple and elementary rules embodied in the Indian Contract Act may have had, and however sufficient and suitable they may have been for the needs which they were intended to meet in 1872, the passage of time has revealed defects, the removal of which has become necessary in order to keep the law abreast of the developments of modern business relations. The law relating to the sale of goods appertains mainly to mercantile transactions. There can be no doubt that during the last half a century, conditions in this country relating to trade and business have undergone material changes. Methods of business have largely altered and new relations have arisen between man and man. In dealing with these relations, it has been necessary to give recognition to new principles, and the Indian Courts have found that a law enacted more than fifty years ago is entirely inadequate to enable them to deal with these new relations or to give effect to the new principles. The result has been that, on various occasions the Courts have had to hold that Chapter VII of the Indian Contract Act is not exhaustive, and to import therein analogies from the decisions of the English Courts.

"The English law relating to the sale of goods which was admittedly the basis of Chapter VII of the Indian Contract Act has itself, since 1872, undergone drastic changes, and was finally codified in 1893 by the present Sale of Goods Act (56 and 57 Vict., C. 71) which discards many of the old common law rules upon which Chapter VII of the Indian Act was based, in favour of provisions more suited to modern conditions or more convenient in actual practice.

"In mercantile transactions, a conflict of laws should, as far as possible, be avoided. Uniformity of law in various countries, particularly in those which have business or trade dealings with one another, is highly convenient and desirable. We therefore, approve of the proposal to adopt the provisions of English Sale of Goods Act so far as they are suitable to Indian conditions as the basis for the present Bill, and thus to make the Indian Law relating to the sale of goods as nearly as possible uniform with the law in force in other parts of the British Empire.

"The Committee retained several of the provisions of the Indian Contract Act which are useful to meet the

special conditions existing in India, and adopted these provisions of the English Act which suited the needs and exigencies of this country."

The above statement and the reasons contained therein equally apply to Mysore. Our merchants in Mysore have large mercantile business with British India and it is very desirable, therefore, to make our law on the subject of sale of goods uniform with that in force in British India.

The Judges of our High Court have been consulted in the matter and they strongly recommend the adoption of the Indian Sale of Goods Act to Mysore.

The main points of importance that the Bill seeks to embody in the existing law are thus stated by the Special Committee:—

"(*a*) The present Bill embodies the principle that the question whether a contract for the sale of goods does or does not pass the property in the goods from the buyer to the seller must in all cases be determined by the intention of the parties to the contract. The provisions of Chapter VII of the Indian Contract Act are vague and conflicting on this point. The Bill codifies the rules by which that intention may be ascertained, but the operation of these rules will be displaced by any terms of the contract defining the intention or by any attendant circumstances, including the conduct of the parties, rendering it ascertainable. In following this principle, we have borne in mind that in mercantile matters the certainty of the rule is often of more importance than the substance. If the parties know beforehand what their legal position is, they can provide for their particular wants by express stipulations. A sale, after all, is a consensual contract and the Bill does not prevent the parties from making any bargain they please. Its object is to lay down clear rules for the cases where the parties have either framed no intention or failed to express it.

"(*b*) The distinction between a sale and an agreement to sell, which was not clear in Chapter VII of the Indian Contract Act, has been clearly brought out. This distinction is very necessary to determine the rights and liabilities of the parties to the contract.

(*c*) It is made clear that a contract of sale can be made by mere offer and acceptance. Neither payment nor delivery is necessary for the purpose.

"(*d*) In the Indian Contract Act the word "warranty" has been used in a very vague sense. In

some provisions it denotes a condition which would enable a party aggrieved by its breach to repudiate the contract, while in others it enables him to claim damages only. In the Bill this ambiguity has been removed.

"(*e*) There is much conflict of decisions regarding the meaning of section 108 of the Indian Contract Act which relates to sales by ostensible owners. This is to a certain extent due to the obscure phraseology of the section itself. The Bill removes this obscruity in clauses 27 to 30 of the Bill and simplifies the law on the subject.

"(*f*) The rules relating to delivery to carriers, stoppage in transit and auction sales are elaborated."

NOTIFICATION.

No. Rl. 2078—*L. C., dated the* 12*th November* 1931.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to amend the Indian Contract Act, 1872, as in force in Mysore is published for general information with the statement of objects and reasons.

By Order,
C. SUBRAHMANYA AIYAR,
Ex-officio *Secretary*,
Mysore Legislative Council.

A Bill to amend the Indian Contract Act, 1872 as in force in Mysore.

Wheras it is expedient to amend the Indian Contract Act, 1872, for the purposes hereinafter appearing: It is hereby enacted as follows :— IX of 1872.

1. (1) This Regulation may be called the Indian Contract Act (Amendment) Regulation, 193 . Short title and commencement.

(2) It shall come into force on the first day of 193

2. For section 178 of the Indian Contract Act, 1872, as in force in Mysore the following section shall be substituted, namely :— Amendment of section 178.

"178. Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge noticed that the pawner has not authority to pledge. Pledge by mercantile agent.

Explanation.—In this section, the expressions "mercantile agent" and "documents of title" shall have the meanings assigned to them in the Sale of Goods Regulation, 193 .

Pledge by person in possession under voidable contract.

178A. When the pawner has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawner's defect of title".

STATEMENT OF OBJECTS AND REASONS.

Section 108 of the Contract Act dealing with the subject of sales of goods by persons who are in possession of the goods as ostensible owners has been materially altered by clauses 27 to 29 of the proposed Sale of Goods Bill. Section 178 of the Act relating to pledges, which is a cognate section and is based on the same principle as section 108, has consequently been amended in British India by Act IV of 1930, and the present Bill proposes to do the same thing in Mysore, so as to bring the law in confirmity with that in British India.

G. R. S. VI—P-2]

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

Office of the Dewan of Mysore.

*Dated, Bangalore,*_____

*No.*_____

Rajamantrapravina
~~Mr.~~ Mr.K.Matthan, B.A., Member of the Mysore Legislative Council, is hereby permitted to introduce ~~a Bill~~ the Sale of Goods Bill and Bill further to amend the Indian Contract Act,1872,as in force in Mysore,

at a meeting of the said Council, subject to the rules for the time being in force under the Mysore Legislative Council Regulation, 1923.

Dewan of Mysore.

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G. R. S. VII—S-III/4]

PUBLIC OFFICES BUILDINGS.

Dated Bangalore,.....191

FROM

Rajamantrapravina K.Matthan,Esq., B.A.,
First Member of Council

To

Rajakaryaprasakta Diwan Bahadur
M.N.Krishna Rao, Esq., B.A.,
Offg. *Dewan of Mysore.*

SIR,

I beg to request your sanction in writing under Section 9 (i) XIX of 1923 of Regulation ~~I of 1907~~, for introducing a bill the Sale of Goods Bill and Bill further to amend the Indian Contract Act,1872,as in force in Mysore,

at a meeting of the Mysore Legislative Council.

I have the honor to be,
Sir,
Your most obedient servant,

K Matthan

Member.

W L 02234—GPB—500—13-3-17.

2520/931 Pol 779 m

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. 8770
758-1931.

Legis 12-31-6

FROM

Captain G. Kirkbride,
SECRETARY TO THE HON'BLE THE RESIDENT IN MYSORE.

GENERAL SECRETARIAT
8 DEC. 1931
No. 1170

To

The Secretary to the Government of Mysore,
General Department.

Legis 12-31-6

Dated Bangalore, 7th Decr. *1931.*

Subject.

The Sale of Goods Bill and the Bill further to amend the Indian Contract Act, 1872, as in force in Mysore.

SIR,

I am directed to acknowledge the receipt of your letter No. Pol.597/Legis.12-31, dated the 28th November, 1931, forwarding copies of the above Bills and to say that the Hon'ble the Resident sees no prima facie objection to the Bills being introduced into the Legislative Council as proposed.

2. As the Bills will require a reference to the Government of India before they are passed into law, a further communication will be awaited.

I have the honour to be,
Sir,
Your most obedient servant,

for SECRETARY TO THE RESIDENT.

BJ

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No. 9

OFFICE OF THE SECRETARY, LEGISLATIVE COUNCIL.

No. 3524-32 *Dated Bangalore* 29/12/1931

OFFICIAL MEMORANDUM.

To

1) S. Hirianniah
2) N. Rama Rao R.C
3) A. V. Ramaswamy Esq
4) A. R. Nagesowara Iyer Esq
5) H. C. Dasappa Esq
6) Balaji Srinivasa Iyer Esq
7) B. K. Gurudachar Esq
8) H. B. Gundappa Esq Bowring
9) D. H. Chandra Sekharaiya Esq

Member, Mysore Legislative Council.

A meeting of the Select Committee to consider the bill to dispense with the necessity of obtaining the sanction of the Local Government to the prosecution of public servants in certain cases and to amend the Indian Contract Act

will be held in the chamber of the Secretary to Government of Council at 1 p.m. on Monday the 18th January 1932.

By Order,

for Chief Secretary, ~~Mysore Legislative Council.~~

Copy to H. B. Gundappa Esq Bowring Second member in office Branch.

24/12

WD 2284—200—3-9-24

2900 83/24

Tels.—"INDUSCOM"

Codes used—A.B.C., 5th Edn., Bentleys.

GOVERNMENT OF MYSORE.

Department of Industries and Commerce.

N. RAMA RAO, Esq., B.A., B.L.,
~~Mr. C. RANGANATHA RAO SAHIB, B.A., B.L.,~~
Director.

OFFICE OF THE DIRECTOR,

D. O. No. A 1/31-32

Bangalore, dated the 30th Decr. *193* 1.

Dear Sir,

With reference to your circular No. 3524-32-Legis dated 29-12-1931 re. the select Committee meeting to be held on the 18th January 1932 to consider the bill to define and amend the Law relating to the sale of goods and the bill to amend the Indian Contract Act, I write to state that as I shall be absent on deputation, I shall not be able to attend.

Yours sincerely,

N Rama Rao

C. Subrahmanya Iyer, Esq. B.A., B.L.,
~~The~~ Secretary,
Legislative Council,
General & Revenue Secretariat,
Bangalore.

OFFICE OF THE SECRETARY OF COUNCIL
4 JAN. 1932
No. 5330

Secy. for personal

2. Second Member)

25

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 18/1/32

No. G 3989-93

CERTIFICATE OF ATTENDANCE.

Certified that Mr. (1) H. C. Dasappa (2) Belur Srinivasiengar (3) Dr. Ganadachar (4) H. B. Gurudappa (5) D. H. Chendrasekharaiya attended the sittings of the Select Committee on the Bill to amend the Indian Limitation Act 1908 on 18th January 1932 at the Public Offices Bangalore as a member thereof.

Sd/- with draft/fair Certificates of attendance in S.Nos. 1, 3, 4 & 5 and issued in person to No. (2) posted

Sd/- for Chief Secretary to Government, Law Department.

Copy to the Select Committee

Sale of Cereals Bill & I.C.A Bill

The following is the list of members of the Select Committee, as announced at the meeting:-

1. Mr. S. Hiriannaiya, P
2. " N. Rama Rao, A
3. " H.V. Ramasvami, A
4. " A.R. Nagesvara Aiyar, P
5. " H.C. Dasappa, P
6. " Belur Srinivasiengar, P
7. " B.K. Garuda Char, P
8. " H.B. Gundappa Gowda, P
9. " D.H. Chandrasekharaiya, and P Mover.

President Secretary Member of Council

Form
18.1.32

26

Draft

Appendix F G—1]

SUBJECT .....

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Section Leg.

File No. 12-31

Serial No. 7

Diary No. of letter replied to ..... No 4137 (1)

To Notification.

General and Revenue Secretariat

( )

the *193*

Date of issue 33/1/32

Signed by Munshi M. Cgs

Under order 49 of the Standing orders for the Conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to amend the Indian Contract Act, 1872, as in force in Mysore, is published for general information

By order

Chief Secy to Govt.

List of enclosures .....

Copied by .....

Examined by .....

To

The Compiler, Mys. Gazette

for publication in P.W. of the

2

Gazette and for the printing
& supply 150 Eng copies &
50 Kannada copies to this
Office. The final proof
may kindly be sent to
this Office for approval
before publication.

Done
19/1/32

REPORT OF THE SELECT COMMITTEE ON THE BILL TO AMEND THE INDIAN CONTRACT ACT, 1872, AS IN FORCE IN MYSORE.

We, the undersigned, Members of the Slect Committee to which the Bill to amend the Indian Contract Act, 1872, as in force in Mysore was referred, have considered the Bill and have ~~now the honour to submit this our Report.~~ to report that the Bill requires no alteration and the Bill need not be republished.

K Venkatappa
Krishnamurthy
M[illegible]
[illegible]
S.G. Narasappa.
Belur Sankaranarayana Rao
D.H. Chandrashekhariya.
G. B. Jinadappa

C.Subramanyaiya
Secretary
18th Jan 1932

*
*

Messrs.N.Rama Rao and H.V.Ramaswami the other members of the Committee were unable to be present at the meeting.

NOTIFICATION.

No. P. 4131—*Legis.* 12-31-7, *dated* 23*rd January* 1932.

Under order 49 of the Standing Orders for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to amend the Indian Contract Act, 1872, as in force in Mysore, is published for general information.

By Order,
N. MADHAVA RAO,
Chief Secretary to Government.

Report of the Select Committee on the Bill to amend Indian Contract Act, 1872, as in force in Mysore.

We, the undersigned, Members of the Select Committee to which the Bill to amend the Indian Contract Act, 1872, as in force in Mysore was referred, have considered the Bill and have to report that the Bill requires no alteration and need not be republished.

K. Matthan.
Chairman.
S. Hiriannaiya.
B. K. Garudachar.
A. R. Nagesvara Iyer.
H. C. Dasappa.
Belur Srinivasaiengar.
D. H. Chandrasekharaiya.
H. B. Gundappa.
*
*

18*th January* 1932.

* Messrs N. Rama Rao and H. V. Ramasvami the other members of the Committee were unable to be present at the meeting.

REPORT OF THE SELECT COMMITTEE ON THE BILL TO DEFINE AND AMEND THE LAW RELATING TO THE SALE OF GOODS.

We, the undersigned, Members of the Select Committee to which the Bill to define and amend the law relating to the Sale of Goods was referred, have considered the Bill and have to report that the Bill requires no alteration except a few verbal corrections as follows:-

(i) In the proviso to Clause 27, insert the word 'a' before 'mercantile agent' in the second place where these words occur;

(ii) In Clause 32, in the last line but one, insert the word 'the' before 'buyer';

(iii) In Clause 52 (2), insert 'the' before 'seller' in the last line.

The Bill need not be re-published.

Sd. Chaudhuri (Chairman.)
Sd. Ananda Aiyar
Sd. Pandurang Rao
Sd. Ramaswami Mudaliar
Sd. S.S. Basappa.
Sd. Brij Kishore
Sd. D.D. Chandrasekharaiya.
Sd. H. B. Gurusiddappa

Sd. Narayanaswami
Secretary
18th Jan 1932

* *

Messrs.N.Rama Rao and H.V.Ramasvami the other members of the Committee were unable to be present at the meeting.

I Draft 31

Appendix F G—1]

SUBJECT .....

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Section 1(3)

File No. 12 31

Serial No. 6

Diary No. of letter replied to .....

No 4133 (1)

To Notification

Madras Order 49 of the Standing Orders for the Conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to define and amend the Law relating to the Sale of Goods is published for general information.

General and Revenue Secretariat

( )

the 193

Date of issue 23/1/32

Signed by M. Venkatasubbaiah

List of enclosures .....

By Order

Copied by .....

Chief Secy to Govt

To .....

Examined by .....

The Compiler Mysore Gazette.

for publication in P IV of the Gazette and for the

WD 71—GPBM—40,000—20-7-31.

2/2

furnishing a supply of 150
spare copies in Eng &
50 in Hindustani to this
office. Final Proof may kindly
be sent to this office
for approval

Copy to Translation Section

Date
19.1.32

NOTIFICATION

No. P. 4133—*Legis.* 12-31-8, *dated* 23*rd January* 1932.

Under order 49 of the Standing Orders for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to define and amend the Law relating to the Sale of Goods, is published for general information.

By Order,
N. MADHAVA RAO,
Chief Secretary to Government.

Report of the Select Committee on the Bill to define and amend the Law relating to the Sale of Goods.

We, the undersigned, Members of the Select Committee to which the Bill to define and amend the law relating to the Sale of Goods was referred, have considered the Bill and have to report that the Bill requires no alteration except a few verbal corrections as follows:—

(i) in the proviso to Clause 27, insert the word 'a' before 'mercantile agent' in the second place where these words occur;

(ii) in Clause 32, in the last line but one, insert the word 'the' before 'buyer';

(iii) in Clause 52 (2), insert 'the' before 'seller' in the last line.

The Bill need not be re-published.

K. Matthan,
(Chairman).
S. Hiriannaiya.
B. K. Garudachar.
A. R. Nagesvara Iyer.
H. C. Dasappa.
Belur Srinivasaiengar.
D. H. Chandrasekharaiya.
H. B. Gundappa.
*
*

18*th January* 1932.

*Messrs. N. Rama Rao and H. V. Ramaswami the other members of the Committee were unable to be present at the meeting.

Appendix F G—1]

SUBJECT .....

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Section Legis

File No. 12—31

Serial No. 9

Diary No. of letter replied to .....

No. Pol. 30 Eus. 4

To The Secretary to the Govt

of Madras

Madras

General and Revenue Secretariat

( )

the *193*

Sir,

Date of issue 9.7.32

With reference to your

letter No 8770/258-1931 dt 7.12.31

re the Sale of Goods Bill &

the Bill further to amend the

Indian Contract Act, 1872, as

in force in Bengal, I am

Signed by Mr. N. R. Rao

directed to forward herewith

two copies of each of the

reports of the S.C. on the

Bills and to state that

at the ~~meeting~~ sitting of the

List of enclosures .....

Legislative Council ~~held~~

Copied by .....

~~on the 6~~ in June 1932, the reports

were considered and the

Examined by .....

Bills were adopted as recommended
by the Committee without any change.

I am to request you
to be so good as to obtain
the Consent of the Govt
of India to the passing
of the said Bills into Law,

I have etc

for Chief Secy

Secret
5.7.32

1855 1932 Pol. 418

All Communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. 6455
758-1931.

Legis 12-31-10

FROM

The SECRETARY TO THE HON'BLE THE RESIDENT IN MYSORE.

To

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore.

Dated, Bangalore, the 23rd Septr., *1932*.

Subject.

Mysore Sale of Goods Bill and Bill to amend the Indian Contract Act, 1872, as in force in Mysore.

SIR,

I am directed to refer to the correspondence ending with your letter No.Pol.30/Legis.12-31-9, dated the 7th/9th July, 1932, and to inform you that the Governor-General in Council is pleased to accord his consent to the Bills referred to above on the understanding that he retains over them the power and authority which vest in him by virtue of Article 18 of the Treaty dated the 26th November, 1913.

I have the honour to be,
Sir,
Your most obedient servant,

Lieut.-Col.,
for SECRETARY TO THE RESIDENT.

MVS

No 4

37

NOTIFICATION.

No. Rl. 2079—*Encls.*—*L. C., dated the* 12*th November* 1931.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to define and amend the law relating to the sale of goods is published for general information with the statement of objects and reasons.

By Order,
C. SUBRAHMANYA AIYAR,
Ex-Officio *Secretary*,
Mysore Legislative Council.

A Bill to define and amend the law relating to the sale of goods.

Whereas it is expedient to define and amend the law relating to the sale of goods; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Regulation may be called the Sale of Goods Regulation, 193 .

(2) It extends to the whole of Mysore.

(3) It shall come into force on the first day of March 193 .

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(1) "buyer" means a person who buys or agrees to buy goods;

(2) "delivery" means voluntary transfer of possession from one person to another;

(3) goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them;

(4) "document of title to goods" includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or

control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

(5) "fault" means wrongful act or default;

(6) "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(7) "goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(8) a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;

(9) "mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods;

(10) "price" means the money consideration for a sale of goods;

(11) "property" means the general property in goods, and not merely a special property;

(12) "quality of goods" includes their state or condition;

(13) "seller" means a person who sells or agrees to sell goods;

(14) "specific goods" means goods identified and agreed upon at the time a contract of sale is made; and

(15) expressions used but not defined in this Regulation and defined in the Indian Contract Act, 1872, as in force in Mysore have the meanings assigned to them in that Act.

Application of provisions of Act IX of 1872.

3. The unrepealed provisions of the Indian Contract Act, 1872, as in force in Mysore, save in so far as they are inconsistent with the express provisions of this Regulation, shall continue to apply to contracts for the sale of goods.

CHAPTER II.

FORMATION OF THE CONTRACT.

Contract of Sale.

Sale and agreement to sell.

4. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the

property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Formalities of the Contract.

Contract of sale how made.

5 (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject-matter of Contract.

Existing or future goods.

6. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods perishing before making of contract.

7. Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before sale but after agreement to sell.

8. Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement

before the risk passes to the buyer, the agreement is thereby avoided.

The Price.

Ascertainment of price.

9. (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation.

10. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided:

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Conditions and Warranties.

Stipulations as to time.

11. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Condition and warranty.

12. (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

When condition to be treated as warranty.

13. (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied undertaking as to title, etc.

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is—

(*a*) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(*b*) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(*c*) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

Sale by description.

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied condition as to quality or fitness.

16. Subject to the provisions of this Regulation and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or

not), there is an implied condition that the goods shall be reasonably fit for such purpose:

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Regulation unless inconsistent therewith.

Sale by sample.

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample, there is an implied condition—

(*a*) that the bulk shall correspond with the sample in quality;

(*b*) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(*c*) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

CHAPTER III.

Effects of the Contract.

Transfer of property as between seller and buyer.

Goods must be ascertained.

18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract,

the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Specific goods in a deliverable state.

20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Specific goods to be put into a deliverable state.

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.

22. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Sale of unascertained goods and appropriation.

23. (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Delivery to carrier.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Goods sent on approval or "on sale or return."

24. When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—

(*a*) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(*b*) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

eservation of right of disposal.

25. (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

isk *prima acie* passes with property

26. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not:

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault:

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

ransfer of Title.

Sale by person not the owner.

27. Subject to the provisions of this Regulation and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of mercantile

agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by one of joint owners.

28. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by person in possession under voidable contract.

29. When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872 as in force in Mysore, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Seller or buyer in possession after sale.

30. (1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV.

Performance of the Contract.

Duties of seller and buyer.

31. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give

possession of the goods to the buyer in exchange for the price, and buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Delivery.

33. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Effect of part delivery.

34. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Buyer to apply for delivery.

35. Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Rules as to delivery.

36. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

Delivery of wrong quantity.

37. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer

may reject them, but if the buyer accepts the goods so delivered, he shall pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Instalment deliveries.

38. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to carrier or wharfinger.

39. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant place.

40. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

41. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

42. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

43. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

44. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

CHAPTER V.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

"Unpaid seller" defined.

45. (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Regulation.—

(*a*) when the whole of the price has not been paid or tendered;

(*b*) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights.

46. (1) Subject to the provisions of this Regulation and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(*a*) a lien on the goods for the price while he is in possession of them;

(*b*) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

(*c*) a right of re-sale as limited by this Regulation.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

Unpaid seller's lien.

Seller's lien

47. (1) Subject to the provisions of this Regulation, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

(*a*) where the goods have been sold without any stipulation as to credit;

(*b*) where the goods have been sold on credit, but the term of credit has expired;

(*c*) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

48. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien.

49. (1) The unpaid seller of goods loses his lien thereon—

(*a*) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(*b*) when the buyer or his agent lawfully obtains possession of the goods;

(*c*) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Stoppage in transit.

Right of stoppage in transit.

50. Subject to the provisions of this Regulation, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Duration of transit.

51. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, the

transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage in transit is effected.

52. (1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such redelivery shall be borne by seller.

Transfer by buyer and seller.

Effect of sub-sale or pledge by buyer.

53. (1) Subject to the provisions of this Regulation, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of

lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

Sale not generally rescinded by lien or stoppage in transit.

54. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, resell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

CHAPTER VI.

SUITS FOR BREACH OF THE CONTRACT.

Suit for price.

55. (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

Damages for non-acceptance.

56. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Damages for non-delivery.

57. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Specific performance.

58. Subject to the provisions of Chapter II of the Specific Relief Act, 1877, as in force in Mysore in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

Remedy for breach of warranty.

59. (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

(*a*) set up against the seller the breach of warranty in diminution or extinction of the price ; or

(*b*) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

Repudiation of contract before due date.

60. Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

Interest by way of damages and special damages.

61. (1) Nothing in this Regulation shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special

damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price—

(*a*) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable;

(*b*) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller— from the date on which the payment was made.

CHAPTER VII.

MISCELLANEOUS.

Exclusion of implied terms and conditions.

62. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

Reasonable time a question of fact.

63. Where in this Regulation any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Auction sale.

64. In the case of a sale by auction—

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(5) the sale may be notified to be subject to a reserved or upset price;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

65. Chapter VII of the Indian Contract Act, 1872, as in force in Mysore is hereby repealed. Repeal.

66. (1) Nothing in this Regulation or in any repeal effected thereby shall affect or be deemed to affect— Savings.

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Regulation, or

(*b*) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability, or

(*c*) anything done or suffered before the commencement of this Regulation, or

(*d*) any enactment relating to the sale of goods which is not expressly repealed by this Regulation, or

(*e*) any rule of law not inconsistent with this Regulation.

(2) The rules of insolvency relating to contracts for the sale of goods shall continue to apply thereto, notwithstanding anything contained in this Regulation.

(3) The provisions of this Regulation relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

STATEMENT OF OBJECTS AND REASONS.

The Indian Contract Act IX of 1872 was introduced into Mysore during the Commission days by means of the Government of India Notification of 27th May 1878. Chapter VII of the Act dealing with the subject of the sale of goods has recently been repealed in British India and replaced by a separate Act, called the Indian Sale of Goods Act (Act III of 1930). The scheme, wording and arrangement of the said Act follows closely the English Sale of Goods Act of 1893 (56 and 57 Victoria, Chapter 71) which is regarded as a very successful and correct codification of this branch of the mercantile law and has met with uniform approval and has been copied in most of the Dominions and Colonies in the British Empire and in the United States of America.

The Indian Act of 1930 was drafted by a special Committee of leading lawyers of India presided over by Sir B. C. Mitter as its Chairman. The Committee observe

as follows regarding the necessity for amending the existing law on the subject

"Whatever merit the simple and elementary rules embodied in the Indian Contract Act may have had, and however sufficient and suitable they may have been for the needs which they were intended to meet in 1872, the passage of time has revealed defects, the removal of which has become necessary in order to keep the law abreast of the developments of modern business relations. The law relating to the sale of goods appertains mainly to mercantile transactions. There can be no doubt that during the last half a century, conditions in this country relating to trade and business have undergone material changes. Methods of business have largely altered and new relations have arisen between man and man. In dealing with these relations, it has been necessary to give recognition to new principles, and the Indian Courts have found that a law enacted more than fifty years ago is entirely inadequate to enable them to deal with these new relations or to give effect to the new principles. The result has been that, on various occasions the Courts have had to hold that Chapter VII of the Indian Contract Act is not exhaustive, and to import therein analogies from the decisions of the English Courts.

"The English law relating to the sale of goods which was admittedly the basis of Chapter VII of the Indian Contract Act has itself, since 1872, undergone drastic changes, and was finally codified in 1893 by the present Sale of Goods Act (56 and 57 Vict., C. 71) which discards many of the old common law rules upon which Chapter VII of the Indian Act was based, in favour of provisions more suited to modern conditions or more convenient in actual practice.

"In mercantile transactions, a conflict of laws should, as far as possible, be avoided. Uniformity of law in various countries, particularly in those which have business or trade dealings with one another, is highly convenient and desirable. We therefore, approve of the proposal to adopt the provisions of English Sale of Goods Act so far as they are suitable to Indian conditions as the basis for the present Bill, and thus to make the Indian Law relating to the sale of goods as nearly as possible uniform with the law in force in other parts of the British Empire.

The Committee retained several of the provisions of the Indian Contract Act which are useful to meet the

special conditions existing in India, and adopted these provisions of the English Act which suited the needs and exigencies of this country

The above statement and the reasons contained therein equally apply to Mysore. Our merchants in Mysore have large mercantile business with British India and it is very desirable, therefore, to make our law on the subject of sale of goods uniform with that in force in British India.

The Judges of our High Court have been consulted in the matter and they strongly recommend the adoption of the Indian Sale of Goods Act to Mysore.

The main points of importance that the Bill seeks to embody in the existing law are thus stated by the Special Committee:—

"(*a*) The present Bill embodies the principle that the question whether a contract for the sale of goods does or does not pass the property in the goods from the buyer to the seller must in all cases be determined by the intention of the parties to the contract. The provisions of Chapter VII of the Indian Contract Act are vague and conflicting on this point. The Bill codifies the rules by which that intention may be ascertained, but the operation of these rules will be displaced by any terms of the contract defining the intention or by any attendant circumstances, including the conduct of the parties, rendering it ascertainable. In following this principle, we have borne in mind that in mercantile matters the certainty of the rule is often of more importance than the substance. If the parties know beforehand what their legal position is, they can provide for their particular wants by express stipulations. Sale, after all, is a consensual contract and the Bill does not prevent the parties from making any bargain they please. Its object is to lay down clear rules for the cases where the parties have either framed no intention or failed to express it.

"(*b*) The distinction between a sale and an agreement to sell, which was not clear in Chapter VII of the Indian Contract Act, has been clearly brought out. This distinction is very necessary to determine the rights and liabilities of the parties to the contract.

"(*c*) It is made clear that a contract of sale can be made by mere offer and acceptance. Neither payment nor delivery is necessary for the purpose.

"(*d*) In the Indian Contract Act the word "warranty" has been used in a very vague sense. In

some provisions it denotes a condition which would enable a party aggrieved by its breach to repudiate the contract, while in others it enables him to claim damages only. In the Bill this ambiguity has been removed

"(*e*) There is much conflict of decisions regarding the meaning of section 108 of the Indian Contract Act which relates to sales by ostensible owners. This is to a certain extent due to the obscure phraseology of the section itself. The Bill removes this obscurity in clauses 27 to 30 of the Bill and simplifies the law on the subject.

"(*f*) The rules relating to delivery to carriers, stoppage in transit and auction sales are elaborated."

NOTIFICATION.

No. P. 4133—*Legis.* 12-31-8, *dated* 23*rd January* 1932.

Under order 49 of the Standing Orders for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to define and amend the Law relating to the Sale of Goods, is published for general information.

By Order,
N. MADHAVA RAO,
Chief Secretary to Government.

Report of the Select Committee on the Bill to define and amend the Law relating to the Sale of Goods.

We,* the undersigned, Members of the Select Committee to which the Bill to define and amend the law relating to the Sale of Goods was referred, have considered the Bill and have to report that the Bill requires no alteration except a few verbal corrections as follows:—

(i) in the proviso to Clause 27, insert the word 'a' before 'mercantile agent' in the second place where these words occur;

(ii) in Clause 32, in the last line but one, insert the word 'the' before 'buyer';

(iii) in Clause 52 (2), insert 'the' before 'seller' in the last line.

The Bill need not be re-published.

K. Matthan,
(*Chairman*).
S. Hiriannaiya.
B. K. Garudachar.
A. R. Nagesvara Iyer.
H. C. Dasappa.
Belur Srinivasaiengar.
D. H. Chandrasekharaiya.
H. B. Gundappa.
*
*

18*th January* 1932.

*Messrs. N. Rama Rao and H. V. Ramasvami the other members of the Committee were unable to be present at the meeting.

No 5

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NOTIFICATION.

No. Rl. 2078—*L. C., dated the* 12*th November* 1931.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to amend the Indian Contract Act, 1872, as in force in Mysore is published for general information with the statement of objects and reasons.

By Order,
C. SUBRAHMANYA AIYAR,
Ex-officio *Secretary*,
Mysore Legislative Council.

A Bill to amend the Indian Contract Act, 1872 as in force in Mysore.

Wheras it is expedient to amend the Indian Contract Act, 1872, for the purposes hereinafter appearing: It is hereby enacted as follows:— IX of 1872.

1. (1) This Regulation may be called the Indian Contract Act (Amendment) Regulation, 193 . Short title and commencement.

(2) It shall come into force on the first day of March 193 .

2. For section 178 of the Indian Contract Act, 1872, as in force in Mysore the following section shall be substituted, namely:— Amendment of section 178.

"178. Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge noticed that the pawner has not authority to pledge. Pledge by mercantile agent.

Explanation.—In this section, the expressions "mercantile agent" and "documents of title" shall have the meanings assigned to them in the Sale of Goods Regulation, 193 .

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NOTIFICATION.

No. P. 4131—*Legis.* 12-31-7, *dated* 23*rd January* 1932.

Under order 49 of the Standing Orders for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to amend the Indian Contract Act, 1872, as in force in Mysore, is published for general information.

By Order,
N. MADHAVA RAO,
Chief Secretary to Government.

Report of the Select Committee on the Bill to amend Indian Contract Act, 1872, as in force in Mysore.

We, the undersigned, Members of the Select Committee to which the Bill to amend the Indian Contract Act, 1872, as in force in Mysore was referred, have considered the Bill and have to report that the Bill requires no alteration and need not be republished.

K. Matthan.
Chairman.
S. Hiriannaiya.
B. K. Garudachar.
A. R. Nagesvara Iyer.
H. C. Dasappa.
Belur Srinivasaiengar.
D. H. Chandrasekharaiya.
H. B. Gundappa.
*
*

18*th January* 1932.

* Messrs N. Rama Rao and H. V. Ramasvami the other members of the Committee were unable to be present at the meeting.

G. R. S. VI.—s-III/14]

DRAFT.

SUBJECT.....

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Section. Legis
File No. R-31
Serial No.

Proceedings of the Government of H. H. the Maharaja of Mysore.

Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT,

( )

, the.....*191*

Order No. P 3833/

Ordered that the accompanying Regulation to declare and amend the law relating to the Sale of Goods which received the assent of His Highness the Maharaja, on the Twenty fourth day of December 1932, be published as Regulation No. V of 1932, in the *Mysore Gazette* for general information.

Date of issue 10-1-33

Signed by Sd/- H. V. Ramaswamy
M. C. S. Iyer

Secretary to Government.

May this be—

(i) Printed?

(ii) Treated as a standing order?

(iii) Published in the "Gazette" English part?

(iv) Translated?

(v) Placed at the disposal of the Press?

(vi) Published in the "Gazette" Kannada part?

To

The Compiler, *Mysore Gazette*, for publication in Part IV-F of the Gazette, in English and Kannada and for supply of .....spare copies in English, and .....spare copies in Kannada to this office, and.....spare copies in English and.....spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore. Proofs should be sent to this office for approval before publication.

6/1/33

Act V of 32

Proceedings of the Government of His Highness
the Maharaja of Mysore.

...

ORDER NO. 3833/Legs 12-31-11

Dated Bangalore 9th January 1933.

10

Ordered that the accompanying Regulation to define and amend the law relating to the Sale of Goods which received the assent of His Highness the Maharaja, on the thirty first day of December 1932 be published as Regulation No.V of 1932 in the Mysore Gazette for general information.

By General Secretary to Government.

To

The Compiler, Mysore Gazette, for publication in Part IV of the Gazette; in English and Kannada and for supply of spare copies in English and spare copies in Kannada to this Office and spare copies in English and spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore. Proofs should be sent to this office for approval before publication.

4T33.

Regulation No. V-7 1932 43

(Received the assent of His Highness the Maharaja on the thirty first day of December 1932)

NOTIFICATION.

No. Rl. 2079—*Encls.*—*L. C., dated the* 12*th November* 1931.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to define and amend the law relating to the sale of goods is published for general information with the statement of objects and reasons.

By Order,
C. SUBRAHMANYA AIYAR,
Ex-Officio *Secretary*,
Mysore Legislative Council.

Regulation

A Bill to define and amend the law relating to the sale of goods.

Whereas it is expedient to define and amend the law relating to the sale of goods; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Regulation may be called the Sale of Goods Regulation, 193[illegible].

(2) It extends to the whole of Mysore.

(3) It shall come into force on the first day of March 1933.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(1) "buyer" means a person who buys or agrees to buy goods;

(2) "delivery" means voluntary transfer of possession from one person to another;

(3) goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them;

(4) "document of title to goods" includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or

control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

(5) "fault" means wrongful act or default;

(6) "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(7) "goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale;

(8) a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;

(9) "mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods;

(10) "price" means the money consideration for a sale of goods;

(11) "property" means the general property in goods, and not merely a special property;

(12) "quality of goods" includes their state or condition;

(13) "seller" means a person who sells or agrees to sell goods;

(14) "specific goods" means goods identified and agreed upon at the time a contract of sale is made; and

(15) expressions used but not defined in this Regulation and defined in the Indian Contract Act, 1872, as in force in Mysore have the meanings assigned to them in that Act.

Application of provisions of Act IX of 1872.

3. The unrepealed provisions of the Indian Contract Act, 1872, as in force in Mysore, save in so far as they are inconsistent with the express provisions of this Regulation, shall continue to apply to contracts for the sale of goods.

CHAPTER II.

Formation of the Contract.

Contract of Sale.

Sale and agreement to sell.

4. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the

property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Formalities of the Contract.

Contract of sale how made.

5 (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject-matter of Contract.

Existing or future goods.

6. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods perishing before making of contract.

7. Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before sale but after agreement to sell.

8. Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement

before the risk passes to the buyer, the agreement is thereby avoided.

The Price.

Ascertainment of price.

9. (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation.

10. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided:

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Conditions and Warranties.

Stipulations as to time.

11. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Condition and warranty.

12. (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

13. (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated. When condition to be treated as warranty.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is— Implied undertaking as to title, etc.

(*a*) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(*b*) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(*c*) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. Sale by description.

16. Subject to the provisions of this Regulation and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:— Implied condition as to quality or fitness.

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or

not), there is an implied condition that the goods shall be reasonably fit for such purpose:

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Regulation unless inconsistent therewith.

Sale by sample.

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample, there is an implied condition—

(*a*) that the bulk shall correspond with the sample in quality;

(*b*) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(*c*) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

CHAPTER III.

Effects of the Contract.

Transfer of property as between seller and buyer.

Goods must be ascertained.

18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract,

the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Specific goods in a deliverable state.

20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Specific goods to be put into a deliverable state.

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.

22. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Sale of unascertained goods and appropriation.

23. (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Delivery to carrier.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Goods sent on approval or "on sale or return."

24. When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—

(*a*) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(*b*) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

eservation of right of disposal.

25. (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Risk *prima facie* passes with property

26. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not:

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault:

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of Title.

Sale by person not the owner.

27. Subject to the provisions of this Regulation and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of mercantile

agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by one of joint owners.

28. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by person in possession under voidable contract.

29. When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872 as in force in Mysore, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Seller or buyer in possession after sale.

30. (1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV.

Performance of the Contract.

Duties of seller and buyer.

31. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give

possession of the goods to the buyer in exchange for the price, and buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Delivery.

33. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Effect of part delivery.

34. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Buyer to apply for delivery.

35. Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Rules as to delivery.

36. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

Delivery of wrong quantity.

37. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer

may reject them, but if the buyer accepts the goods so delivered, he shall pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Instalment deliveries.

38. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to carrier or wharfinger.

39. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant place.

40. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

41. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

42. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

43. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

44. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

CHAPTER V.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

"Unpaid seller" defined.

45. (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Regulation.—

(*a*) when the whole of the price has not been paid or tendered;

(*b*) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights.

46. (1) Subject to the provisions of this Regulation and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(*a*) a lien on the goods for the price while he is in possession of them;

(*b*) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

(*c*) a right of re-sale as limited by this Regulation.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

Unpaid seller's lien.

Seller's lien.

47. (1) Subject to the provisions of this Regulation, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

(*a*) where the goods have been sold without any stipulation as to credit;

(*b*) where the goods have been sold on credit, but the term of credit has expired;

(*c*) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

48. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lion.

49. (1) The unpaid seller of goods loses his lien thereon—

(*a*) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(*b*) when the buyer or his agent lawfully obtains possession of the goods;

(*c*) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Stoppage in transit.

Right of stoppage in transit.

50. Subject to the provisions of this Regulation, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Duration of transit.

51. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the

transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage in transit is effected.

52. (1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such redelivery shall be borne by seller.

Transfer by buyer and seller.

Effect of sub-sale or pledge by buyer.

53. (1) Subject to the provisions of this Regulation, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of

lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

Sale not generally rescinded by lien or stoppage in transit.

54. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, resell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

CHAPTER VI.

SUITS FOR BREACH OF THE CONTRACT.

Suit for price.

55. (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

Damages for non-acceptance.

56. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Damages for non-delivery.

57. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Specific performance.

58. Subject to the provisions of Chapter II of the Specific Relief Act, 1877, as in force in Mysore in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

Remedy for breach of warranty.

59. (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

(*a*) set up against the seller the breach of warranty in diminution or extinction of the price ; or

(*b*) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

Repudiation of contract before due date.

60. Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

Interest by way of damages and special damages.

61. (1) Nothing in this Regulation shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special

damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price—

(*a*) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable;

(*b*) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller— from the date on which the payment was made.

CHAPTER VII.

MISCELLANEOUS.

Exclusion of implied terms and conditions.

62. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

Reasonable time a question of fact.

63. Where in this Regulation any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Auction sale.

64. In the case of a sale by auction—

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(5) the sale may be notified to be subject to a reserved or upset price;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

65. Chapter VII of the Indian Contract Act, 1872, as in force in Mysore is hereby repealed. Repeal.

66. (1) Nothing in this Regulation or in any repeal effected thereby shall affect or be deemed to affect— Savings.

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Regulation, or

(*b*) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability, or

(*c*) anything done or suffered before the commencement of this Regulation, or

(*d*) any enactment relating to the sale of goods which is not expressly repealed by this Regulation, or

(*e*) any rule of law not inconsistent with this Regulation.

(2) The rules of insolvency relating to contracts for the sale of goods shall continue to apply thereto, notwithstanding anything contained in this Regulation.

(3) The provisions of this Regulation relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

(50) M. N. Krishna Rao, Dewan.

STATEMENT OF OBJECTS AND REASONS.

The Indian Contract Act IX of 1872 was introduced into Mysore during the Commission days by means of the Government of India Notification of 27th May 1878. Chapter VII of the Act dealing with the subject of the sale of goods has recently been repealed in British India and replaced by a separate Act, called the Indian Sale of Goods Act (Act III of 1930). The scheme, wording and arrangement of the said Act follows closely the English Sale of Goods Act of 1893 (56 and 57 Victoria, Chapter 71) which is regarded as a very successful and correct codification of this branch of the mercantile law and has met with uniform approval and has been copied in most of the Dominions and Colonies in the British Empire and in the United States of America.

The Indian Act of 1930 was drafted by a special Committee of leading lawyers of India presided over by Sir B. C. Mitter as its Chairman. The Committee observe

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as follows regarding the necessity for amending the existing law on the subject :—

"Whatever merit the simple and elementary rules embodied in the Indian Contract Act may have had, and however sufficient and suitable they may have been for the needs which they were intended to meet in 1872, the passage of time has revealed defects, the removal of which has become necessary in order to keep the law abreast of the developments of modern business relations. The law relating to the sale of goods appertains mainly to mercantile transactions. There can be no doubt that during the last half a century, conditions in this country relating to trade and business have undergone material changes. Methods of business have largely altered and new relations have arisen between man and man. In dealing with these relations, it has been necessary to give recognition to new principles, and the Indian Courts have found that a law enacted more than fifty years ago is entirely inadequate to enable them to deal with these new relations or to give effect to the new principles. The result has been that, on various occasions the Courts have had to hold that Chapter VII of the Indian Contract Act is not exhaustive, and to import therein analogies from the decisions of the English Courts.

"The English law relating to the sale of goods which was admittedly the basis of Chapter VII of the Indian Contract Act has itself, since 1872, undergone drastic changes, and was finally codified in 1893 by the present Sale of Goods Act (56 and 57 Vict., C. 71) which discards many of the old common law rules upon which Chapter VII of the Indian Act was based, in favour of provisions more suited to modern conditions or more convenient in actual practice.

"In mercantile transactions, a conflict of laws should, as far as possible, be avoided. Uniformity of law in various countries, particularly in those which have business or trade dealings with one another, is highly convenient and desirable. We therefore, approve of the proposal to adopt the provisions of English Sale of Goods Act so far as they are suitable to Indian conditions as the basis for the present Bill, and thus to make the Indian Law relating to the sale of goods as nearly as possible uniform with the law in force in other parts of the British Empire.

"The Committee retained several of the provisions of the Indian Contract Act which are useful to meet the

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SUBJECT.....

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Section. Legis
File No. 12-31
Serial No. 12

Proceedings of the Government of H. H. the Maharaja of Mysore.

Diary No. of letter replied to.....

Order No. P. 3834 (Encl

GENERAL AND REVENUE SECRETARIAT,

( )

, *the*.....*191* .

Ordered that the accompanying Regulation to amend the Dustoor Contract 1932. as in force in Mysore

which received the assent of His Highness the Maharaja, on the thirty first day

Date of issue 10-1-33

~~day~~ of December 1932,

Signed by C. S. Doyle

be published as Regulation No. VI of 1932, in the *Mysore Gazette* for general information.

Secretary to Government.

May this be—

(i) Printed?

(ii) Treated as a standing order?

(iii) Published in the "Gazette" English part?

(iv) Translated?

(v) Placed at the disposal of the Press?

(vi) Published in the "Gazette" Kannada part?

9/1

To

The Compiler, *Mysore Gazette*, for publication in Part ~~III~~ IV of the Gazette, in English and Kannada and for supply of .....spare copies in English, and .....spare copies in Kannada to this office, and.....spare copies in English and.....spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore. Proofs should be sent to this office for approval before publication.

Issue 6/1/33

Proceedings of the Government of His Highness
the Maharaja of Mysore.

ORDER NO. P 3834/Legis/12-31-32 (Cen)

Dated 9th January 1933.

To.

Ordered that the accompanying Regulation to amend the Indian Contract Act, 1872, as in force in Mysore, which received the assent of His Highness the Maharaja on the thirty first day of December 1932 be published as Regulation No.VI of 1932 in the Mysore Gazette for general information.

for General Secretary to Government.

To

The Compiler, Mysore Gazette, for publication in Part IV of the Gazette, in English and Kannada and for supply of spare copies in English and spare copies in Kannada to this Office, and spare copies in English and spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore. Proofs should be sent to this office for approval before publication.

Regulation No. VI of 1932.

Received the assent of His Highness the Maharaja on the thirty first day of December 1932,

NOTIFICATION.

No. Rl. 2078—*L. C., dated the* 12*th November* 1931.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to amend the Indian Contract Act, 1872, as in force in Mysore is published for general information with the statement of objects and reasons.

By Order,
C. SUBRAHMANYA AIYAR,
Ex-officio *Secretary*,
Mysore Legislative Council.

Regulation

A Bill to amend the Indian Contract Act, 1872 as in force in Mysore.

Wheras it is expedient to amend the Indian Contract Act, 1872, for the purposes hereinafter appearing: It is hereby enacted as follows:— IX of 1872.

1. (1) This Regulation may be called the Indian Contract Act (Amendment) Regulation, 193 . Short title and commencement.

(2) It shall come into force on the first day of March 193 .

2. For section 178 of the Indian Contract Act, 1872, as in force in Mysore the following section shall be substituted, namely:— Amendment of section 178.

"178. Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawner has not authority to pledge. Pledge by mercantile agent.

Explanation.—In this section, the expressions "mercantile agent" and "documents of title" shall have the meanings assigned to them in the Sale of Goods Regulation, 193 .

REGULATION No. V OF 1932.

(Received the assent of His Highness the Maharaja on the thirty-first day of December 1932.)

A Regulation to define and amend the law relating to the Sale of Goods.

Price 0-1-6

NOTIFICATION.

Order No. P. 3833—*Legis.* 12-31-11, *dated Bangalore, 9th—10th January* 1933.

Ordered that the accompanying Regulation to define and amend the law relating to the Sale of Goods which received the assent of His Highness the Maharaja on the thirty-first day of December 1932 be published as Regulation No. V of 1932 in the *Mysore Gazette* for general information.

H. V. RAMASVAMI,
General Secretary to Government.

REGULATION No. V OF 1932.

(*Received the assent of His Highness the Maharaja on the thirty-first day of December* 1932.)

A Regulation to define and amend the law relating to the Sale of Goods.

Whereas it is expedient to define and amend the law relating to the sale of goods, it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Regulation may be called the Sale of Goods Regulation, 1932.

(2) It extends to the whole of Mysore.

(3) It shall come into force on the first day of March 1933.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(1) "buyer" means a person who buys or agrees to buy goods;

(2) "delivery" means voluntary transfer of possession from one person to another;

(3) goods are said to be in a "deliverable state" when they are in such state that the buyer would, under the contract, be bound to take delivery of them;

(4) "document of title to goods" includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

(5) "fault" means wrongful act or default;

(6) "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(7) "goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(8) a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;

(9) "mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods;

(10) "price" means the money consideration for a sale of goods;

(11) "property" means the general property in goods, and not merely a special property;

(12) "quality of goods" includes their state or condition;

(13) "seller" means a person who sells or agrees to sell goods;

(14) "specific goods" means goods identified and agreed upon at the time a contract of sale is made; and

(15) expressions used but not defined in this Regulation and defined in the Indian Contract Act, 1872, as in force in Mysore, have the meanings assigned to them in that Act.

Application of provisions of Act IX of 1872.

3. The unrepealed provisions of the Indian Contract Act, 1872, as in force in Mysore, save in so far as they are inconsistent with the express provisions of this Regulation shall continue to apply to contracts for the sale of goods.

CHAPTER II.

FORMATION OF THE CONTRACT.

Contract of Sale.

Sale and agreement to sell.

4. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Formalities of the Contract.

Contract of sale how made.

5. (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of month or may be implied from the conduct of the parties.

Subject-matter of Contract.

Existing or future goods.

6. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods perishing before making of contract.

7. Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before sale but after agreement to sell.

8. Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

The Price.

Ascertainment of price.

9. (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation

10. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided.

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Conditions and Warranties.

Stipulations as to time.

11. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Condition and warranty.

12. (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition of a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

When condition to be treated as warranty.

13. (1) Where a contract of sale is subject to any condition to be fulfilled by the selier, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied undertaking as to title, &c.

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

(*a*) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(*b*) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(*c*) an implied warranty that the goods shall be free from any charge of encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

Sale by description.

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied conditions as to quality or fitness.

16. Subject to the provisions of this Regulation and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:

Provided that, in the case of a contract for the sale of a specified article under its patent of other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Regulation unless inconsistent therewith.

Sale by sample.

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample, there is an implied condition—

(*a*) that the bulk shall correspond with the sample in quality;

(*b*) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(*c*) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

CHAPTER III.

EFFECTS OF THE CONTRACT.

Transfer of property as between seller and buyer.

Goods must be ascertained.

18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

19. (1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Specific goods in a deliverable state.

20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Specific goods to be put into a deliverable state.

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

Specific goods in a deliverable state, when the seller has to *do anything* thereto in order to ascertain price.

22. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Sale of unascertained goods and appropriation.

23. (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Delivery to carrier.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Goods sent on approval or "on sale or return."

24. When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—

(*a*) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(*b*) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

Reservation of right of disposal.

25. (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does dot honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

26. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not : Risk *prima facie* passes with property.

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault :

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of Title.

27. Subject to the provisions of this Regulation and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell : Sale by person not the owner.

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same, provided that the buyer acts in good faith and has not at, the time of the contract of sale, notice that the seller has not authority to sell.

28. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not, at the time of the contract of sale, notice that the seller has not authority to sell. Sale by one of joint owners.

29. When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872, as in force in Mysore, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title. Sale by person in possession under voidable contract.

Seller or buyer in possession after sale.

30. (1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery of transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV.

Performance of the Contract.

Duties of seller and buyer.

31. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Delivery.

33. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Effect of part delivery.

34. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

35. Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery. Buyer to apply for delivery.

36. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced. Rules as delivery.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

37. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered, he shall pay for them at the contract rate. Delivery of wrong quantity.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Instalment deliveries.

38. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to carrier or wharfinger.

39. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits to do so, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant place.

40. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

41. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and untill he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, onrequest, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

42. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

43. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods

44. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

CHAPTER V.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

"Unpaid seller" defined

45. (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Regulation.—

(*a*) when the whole of the price has not been paid or tendered;

(*b*) when a bill of exchange or other negotiable instrument has been received as conditional payment, and

the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consigner or agent who has himself paid, or is directly responsible for the price.

Unpaid seller's rights

46. (1) Subject to the provisions of this Regulation and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(*a*) a lien on the goods for the price while he is in possession of them;

(*b*) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

(*c*) a right of re-sale as limited by this Regulation.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer

Unpaid seller's lien.

Seller's lien.

47. (1) Subject to the provisions of this Regulation, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

(*a*) where the goods have been sold without any stipulation as to credit;

(*b*) where the goods have been sold on credit, but the term of credit has expired;

(*c*) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithsanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

48. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

49. (1) The unpaid seller of goods loses his lien thereon.— Termination of lien.

(*a*) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(*b*) when the buyer or his agent lawfully obtains possession of the goods;

(*c*) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Stoppage in transit.

50. Subject to the provisions of this Regulation, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price. Right of stoppage in transit.

51. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee. Duration of transit.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the

possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage in transit is effected.

52. (1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case, the notice, to be effectual, shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

Transfer by buyer and seller.

Effect of sub-sale or pledge by buyer.

53. (1) Subject to the provisions of this Regulation, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

Sale not generally rescinded by lien or stoppage in transit.

54. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

(3) Where an uupaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

CHAPTER VI.

SUITS FOR BREACH OF THE CONTRACT.

Suit for price.

55. (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the

seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

Damages for non-acceptance.

56. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Damages for non-delivery.

57. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Specific performance.

58. Subject to the provisions of Chapter II of the Specific Relief Act, 1877, as in force in Mysore in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

Remedy for breach of warranty

59. (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

(*a*) set up against the seller the breach of warranty in diminution or extinction of the price; or

(*b*) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty, if he has suffered further damage.

Repudiation of contract before due date.

60. Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

Interest by way of damages and special damages.

61. (1) Nothing in this Regulation shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special

damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

2) In the absence of a contract to the contrary the Court may award interest at such rate as it thinks fit on the amount of the price—

(*a*) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable;

(*b*) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller—from the date on which the payment was made.

CHAPTER VII.

MISCELLANEOUS.

Exclusion of implied terms and conditions.

62. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

Reasonable time a question of fact.

63. Where in this Regulation any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

64. In the case of a sale by auction—

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction:

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale

contravening this rule may be treated as fraudulent by the buyer;

(5) the sale may be notified to be subject to a reserved or upset price;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Repeal.

65. Chapter VII of the Indian Contract Act, 1872 as in force in Mysore is hereby repealed.

Savings.

66. (1) Nothing in this Regulation or in any repeal effected thereby shall affect or be deemed to affect—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Regulation, or

(*b*) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability, or

(*c*) anything done or suffered before the commencement of this Regulation, or

any enactment relating to the sale of goods which is not expressly repealed by this Regulation, or

(*e*) any rule of law not inconsistent with this Regulation.

(2) The rules of insolvency relating to contracts for the sale of goods shall continue to apply thereto, notwithstanding anything contained in this Regulation.

(3) The provisions of this Regulation relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

M. N. KRISHNA RAO.
Dewan.

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NOTIFICATION.

Order No. P. 3834—*Legis.* 12-31-12,
dated 9th—10th January 1933.

Ordered that the accompanying Regulation to amend the Indian Contract Act, 1872, as in force in Mysore, which received the assent of His Highness the Maharaja on the thirty-first day of December 1932 be published as Regulation No. VI of 1932 in the *Mysore Gazette* for general information.

H. V. RAMASVAMI,
General Secretary to Government

REGULATION No. VI OF 1932.

(Received the assent of His Highness the Maharaja on the Thirty-first day of December 1932.)

A Regulation to amend the Indian Contract Act, 1872, as in force in Mysore.

Whereas it is expedient to amend the Indian Contract Act, 1872, for the purposes hereinafter appearing, it is hereby enacted as follows:— IX of 1872

1. (1) This Regulation may be called the Indian Contract Act (Amendment) Regulation, 1932. Short title and commencement.

(2) It shall come into force on the first day of March 1933.

2. For section 178 of the Indian Contract Act, 1872, as in force in Mysore, the following section shall be substituted, namely:— Amendment of section 178.

"178. Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly Pledge by mercantile agent.